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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/507,070

10/12/2004

Jean-Marie Dollat

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OLIFF & BERRIDGE, PLC

P.O. BOX 320850

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EXAMINER

PRATT, HELEN F

ART UNIT

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1794

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/507,070	<b>Applicant(s)</b> DOLLAT ET AL.	
	<b>Examiner</b> Helen F. Pratt	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on Jan 28 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robert et al. (WO 0028835) in view of Binder et al. (6,287,627) and Montsano (British 1,156,010) and Rawlins (4,859,709).

Robert et al. disclose a feed supplement in solid form containing an ester of methionine and a carrier which can be soya cake (abstract and page 20, lines 5-30). Isopropyl ester is disclosed as in claim 3 on page 8, lines 25-35. Claims 1-3, 5, 7 differ from the reference in the use of a porous carrier material. However, soya cake is seen to be porous as vegetable materials have an exchange of gases, i. e. (breathe), which requires pores. Also, Binder et al. disclose that it is known to granulate a Methionine salt solution (abstract and col. 7, lines 20-31). Monsanto disclose that it is known to combine methionine hydroxy analogs with vermiculite, clay, silica, bentonite (claim 5) (page 14, lines 40-45). Also, Bevans et al. disclose the use of MHA on an inorganic silica-based carrier which has been dried (col. 2, lines 42-45). Therefore, it would have been obvious to make a feed supplement in solid form, using the claimed esters of 2-hydroxy-4-(methylthio) butanoic acid (HMBI) as it is known to combine methionine with inert materials.

Claim 1 has been amended to require particular carrier material. Rawlins discloses a composition containing porous silica in amounts within the claimed range feeds (abstract, col. 1, lines 10-18, lines 50-55). . The reference discloses that silicas have been known to absorb liquid animal feed additives. No reason is seen that it shouldn't absorb the claimed methionine derivatives since they are liquid. Therefore, as silica has been disclosed as above, it would have been obvious to use it in the composition of the combined references.

Claim 4 further requires that the porous carrier has a porosity of 0.4 ml/g. However, it would have been within the skill of the ordinary worker to use a particular degree of porosity, which would have absorbed the claimed material, since the particular porous materials are well known. Therefore, it would have been obvious to use a particular degree of porosity which would absorb the claimed materials.

Claim 6 further requires sepiolite and claim 7 silica. Silica has been disclosed above. "Up to" reads on zero amounts. Bevens et al. disclose 52% liquid MHA product on silica (col. 2, lines 42-45). Nothing new is seen in the use of a different inorganic carrier absent a showing of unexpected results. Therefore, it would have been obvious to make a product containing a methionine derivative in particular amounts on an inorganic substance.

Claims 1, 8 and 11 further require particular particle sizes. Binder et al. disclose various particle sizes for methionine salts (col. 6, lines 10-15). The composition contains siliceous material (col. 7, lines 25-30). Therefore, it would have been obvious to substitute the methionine material of claim 1 for the methionine salt solution of the reference since they are both liquid forms of methionine and nothing new is seen in spraying one liquid solution as opposed to another on silica type material.

Binder et al. disclose the use of a free flowing animal feed supplement (col. 7, lines 15-21). Claim 9 requires a particular form of methionine. Even though a different form of methionine is used as in claim 9 by the reference, it still is in liquid form, which on the silica makes a solid, and no patentable distinction is seen in the particular liquid composition on the solid material.

Claim 11 further requires particular methionine derivative esters. Robert et al. disclose the use of esters as claimed (page 6, lines 10-15). Therefore, it would have been obvious to use known esters in the above combination of references.

#### ARGUMENTS

Applicant's arguments filed 1-28-08 have been fully considered but they are not persuasive. Applicants argue that the combined references do not disclosed the claimed limitations. As to the particular amounts of supplement in the feed, nothing is seen that these amounts cannot be varied according to their intended use. Certainly, if one can use methionine or a liquid supplement combined with a solid silica, then other liquids can be used.

Even though the references to Roberts and Binder do not teach exactly the claimed invention, they do show that it is known to make feed supplements with the methionine derives or compositions close to the claimed ones.

As to Bevans, it is not seen that the phrase "limited success" teaches away from the claimed invention, since it discloses the claimed invention in paragraph 13. Nothing has been shown that Alimet.TM does not contain the claimed size of carrier, or use MHA, which is found in claim 1.

Nothing is seen that Monsanto does not teach the claimed amounts of methionine. The biologically active component (i. e. methionine) is added to inert fillers such as silica). The active substance can be methionine hydroxy analogues (page 1, lines 40-43).

The new reference to Rawlins discloses the use of silica in the claimed size which can be used in animal feeds (abstract, dol. 1, lines 10-18, lines 50-55).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Helen F. Pratt/

Primary Examiner, Art Unit 1794

Hp 5-3-08